PRACTICABLE RE-ADJUSTMENTS

OF THE

RELATIONS OF THE CHURCH TO THE STATE.

A PAPER

READ BY

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In discussing this question I wish to lay considerable stress on the word practicable. I do not propose to consider how the relations of the Church to the State could be reconstructed, if, as in America and our colonies, we had to begin *de novo*, nor do I wish to treat as an open question the desirability of the union of Church and State, which, before such an assembly, I take for granted.

The civil and ecclesiastical rights handed down to us as a precious heritage from the past have rendered great benefits to the nation and the Church, and we must beware lest we recklessly tamper with or diminish any of them. But the changes which have been made in the Legislature during the last half century (the full effect of which the Church is now feeling, and the more acutely in consequence of its very vigour and activity), render necessary some modification of the existing relations between Church and State.

I propose to treat the subject under these heads, as far as the brief time allotted to me will permit:—

1. The Reform of Convocation;
2. Ecclesiastical Legislation;
3. The relation of the Crown to the Church;
4. The Ecclesiastical Courts.

I. Though Convocation has happily recovered from that suspension of its powers which for more than a century paralysed all the legislative activity of the Church, allowed abuses to grow up unrestrained, and discipline to become lax, and now enjoys the privilege of debate and action; yet the representation of the Parochial Clergy in the Southern Province, which is so necessary to add weight and authority to the deliberations of that body before it can be intrusted with any legislative power, is still entirely inadequate. The Northern Convocation has already reformed itself by a larger infusion of the Parochial Clergy, and the Archbishop of Canterbury has admitted that he has himself the power to initiate reforms by summoning fresh proctors to Convocation for the newly-constituted Dioceses of St. Alban's and Truro.

An equally important reform would be, without destroying the old Provincial Synods of York and Canterbury, to give them opportunities of discussing together important questions, either by Joint-Committees, or by delegates as in 1661, and of forming a general synod when necessary. Thus reformed and consolidated into a compact homogeneous body, Convocation might exercise its ancient prerogative of making canons on subjects of faith and ritual, and the principle of the Bishop of London's Bill in 1874 might be adopted, which proposed that the canons, after the assent of the Queen in Council, and after being laid upon the table of both Houses for forty days without opposition, should have the force of law.

Any addition to Convocation of a Lay House, sitting as an integral part of it, which finds favour with some of the Clergy, would encroach upon the prerogatives of Parliament, as the representation of the Temporalty, and would never be granted by the House of Commons.

Any representative assembly of the Laity outside the House of Commons must be a voluntary body, such as the Diocesan Conferences now are, and I think that it would be a great advantage for the ventilation of ecclesiastical questions if means were taken either at the invitation of the Archbishops and Bishops, or in some other way, to enable the Diocesan Conferences (themselves elected and representative bodies) to send their representatives to form a central Conference, and bring to one focus the opinions of Lay Churchmen throughout the country. Such a body might be consulted by Convocation on all questions affecting ecclesiastical legislation, and could work with it by means of Committees in the same way that a Committee of Laymen appointed by the Church Defence Institution conferred this year with a Committee of the Lower House of Convocation of Canterbury on the subject of the reform of Convocation, and drew up a memorial, which was presented to the Archbishop of Canterbury.

Such a meeting to ascertain the feeling of Lay Churchmen on the subject of the Burials Question would not fail to have due weight with the Houses of Parliament when the influence of

Nonconformists and the votes of Scotch and Irish members combine to neutralize the opinions and votes of the great majority of English Churchmen on that subject.

II. In whatever way it may be found practicable to bring the influence of Lay opinion and that of the Clergy expressed in Convocation to bear on the Houses of Parliament (and they both have strong claims to be consulted before legislation), the temporal accidents of the Church, which concern the Laity quite as much as the Clergy, must always in the end be decided by the great Lay Council of the nation. But Parliament, by reason of its mixed religious opinions, is no longer fitted, even if it had the time, to discuss the details of ecclesiastical legislation. If any such legislation is to take place, some forbearance must be shown by the House of Commons in dealing with those subjects, as a small Nonconformist or Roman Catholic minority might, if so disposed, stop the passage of any Bill through the House. It surely would not be unreasonable to ask that all ecclesiastical Bills should, after a second reading in either House, be referred to a joint committee of both Houses of Parliament. In 1864 a joint committee of five members from each House, with the Lord President as Chairman, was appointed for consideration of Metropolitan Railway schemes. In 1873 Railway and Canal Bills were committed to a joint committee, and a Member of the House of Commons was chosen Chairman. Such a course would enable the Bishops and the representatives of the Laity in Parliament to meet; details might be more fitly discussed, and, with the assistance of the leading Churchmen in both Houses, the progress of legislation might be facilitated. This would remove one of the obstacles to any reforms in the Church, which, in the present state of business in the House of Commons, it is almost impossible to carry.

There are important questions which demand the attention of Convocation and Parliament, such as the discipline of the Church, the consolidation of the Church Building Acts, the reform of the Ecclesiastical Courts and their procedure, and many others.

I cannot forbear from touching briefly on what is at the present time a burning question, and one where the relations of

Church and State require readjustment. It was reasonable for the State to require the Church, when all the nation was of one common faith to provide burial-grounds for all; but such is not the case now, when religious sects have shaken off their allegiance and have provided in many cases chapels and burial-grounds of their own.

The churches and churchyards were mostly given by private benefactors for the special use of the Church of England; and the common law right of burial only exists, subject to the services of the Clergy.

The difficulty should be met, not by asking the Church to throw open her churchyards to all those who have rejected her ministrations during life, though she is willing to bury all Christians who accept her services, but by the State or the dissenting community itself providing means for the burial in cemeteries of all whose friends do not wish to avail themselves of the services of the National Church.

The confidence of Churchmen in the Archbishops and Bishops as representing the Church in the House of Lords has been rudely shaken by the absence of 14 Prelates on the recent division on Lord Harrowby's motion, and the hostility of others to the views of 13,800 Clergy expressed in the declaration on this question.

I regret that on such an important subject the votes of the Bishops were not more in accordance with the Lower House of the Convocation of Canterbury, which by 51 votes to 7 passed a resolution praying "the Upper House to oppose permission being given to any person other than a Minister of the Church of England to officiate at burials in our churchyards, being assured that such a change in the law would be a grievance to the general body of churchmen, and will have a tendency to unsettle the present relations between Church and State." *

III. The relation of the Crown to the Church.

It is true that the personal will of the Sovereign is no longer supreme, and, as Mr. Gladstone points out, the Sovereign now acts "through the medium or under the control of ministers,

* *Guardian*, July, 11, 1877.

virtually chosen by a majority in a Parliament of mixed belief,"* but I do not think we have any reason to find fault with the present system of the appointment of Bishops by the Crown. It is strictly analagous to the action of the lay patron who presents to a living; nor is it very different from the election of the Bishops in the early ages by the acclamation of the people, who the Prime Minister now represents.

I am not in favour of doing away with the *congé d' élire*, which is not merely a legal form, nor the fiction which it is popularly supposed to be: any Chapter might, on adequate grounds, refuse to accept the Bishop nominated by the Crown, and, if supported by public opinion, might brave, with impunity, the tremendous but obsolete penalties of the "Præmunire."

IV. The supremacy of the Crown as at present exercised in spiritual causes has been questioned by the English Church Union, who passed a resolution "that any Court which is bound to frame its decisions in accordance with the judgments of the Judicial Committee in Privy Council, or any other secular Court, does not possess any spiritual authority with respect to such decisions,"† but I think that the majority of the Laity are opposed to any other than a Lay Court of Final Appeal, for this reason: The Sovereign in Council does not attempt to make or to settle doctrine; the Court simply decides upon the interpretation of the laws and formularies of the Church as expressed in her Articles and Prayer-book, and whether that which a Clergyman has said or done is in conformity with them.

Some find fault with its latitude of interpretation on points of doctrine, and its historical criticism of the rubrics on questions of ritual; others say that "the living voice of the Church" should be appealed to. Are either of them prepared to submit the whole of our faith and formularies to the crucible of a reformed Convocation, which might re-cast the ritual and narrow the comprehensiveness of the Church of England?

The objections taken to the manner of appointing the new Judge under the Public Worship Regulation Act, seem to me to be more technical than real. The Archbishop of Canterbury, in

* "The Royal Supremacy," 1877, p. 43.

† "Quarterly Review," July, 1877, p. 254.

his letter to Canon Carter, says he is, both by statute and by appointment from the Archbishops, official Principal—he is therefore an ecclesiastical Judge, if not strictly according to ecclesiastical precedents, yet duly appointed.*

If some of the provisions of the Public Worship Regulation Act are contrary to the ancient principles of our ecclesiastical law, agitate for their repeal, but in the meanwhile obey the law and the decisions of its lawful officers.

Churchmen have a right to ask, not that the highest Court shall be formed of Ecclesiastics only, who cannot be supposed to have the judicial training or legal acumen to fit them for it, but that the highest Court shall at least be restricted to Churchmen some of whom shall be learned in ecclesiastical law, and that in any reforms of the Ecclesiastical Courts, Convocation should be consulted.

Lastly. In most of the countries of Europe a struggle is now going on between the temporal and the spiritual power, and in all cases where the ecclesiastical authority has claimed for itself undue preponderance over the civil, it has brought down defeat and violent reactionary measures on itself. But in this country the influence of the great body of the Laity will prevent any encroachment of sacerdotal power. There is more fear lest the just rights of the Church of England should be overlooked by a Parliament prejudiced against a small section of the Clergy, and that the House of Commons should not act in the same conciliatory spirit towards Convocation as it did in 1662. I trust that the moderate, and, I believe, practicable reforms which I have advocated may be carried out, so as to strengthen the ties between Church and State, which have done so much to further the cause of religion and liberty in this country.

* The facts are these :—Lord Penzance, instead of taking the oaths of allegiance and subscribing to the thirty-nine Articles on his appointment by the Archbishop of Canterbury as his predecessor did (which appointment was confirmed by the Dean and Chapter of Canterbury), was appointed under an Act of Parliament by the two Archbishops Judge of the Provincial Court of Canterbury and York, and Her Majesty approved of the appointment through the Secretary of State. He then, on the resignation of Sir Robert Phillimore and Mr. Vernon, became by virtue of the Act of Parliament official principal of the Arches Court of Canterbury and the Consistory Court at York.—"Court of Hrches" return moved by Mr. Hubbard, 1877.